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MAKING ADDITIONAL IMMIGRANT VISAS AVAILABLE FOR IMMIGRANTS FROM CERTAIN FOREIGN COUNTRIES, AND FOR OTHER PURPOSES

SEPTEMBER 23, 1971.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. RYAN, from the Committee on the Judiciary, submitted the following

REPORT

TOGETHER WITH SEPARATE VIEWS

[To accompany H.R. 9615]

The Committee on the Judiciary, to whom was referred the bill (H.R. 9615) to make additional immigrant visas available for immigrants from certain foreign countries, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF BILL

The purpose of this bill is to remove two inequities that have developed subseqent to the enactment of the 1965 amendments to the Immigration and Nationality Act which became fully effective on July 1, 1968. Specifically, the bill would: (1) make additional special immigrant visas available annually to each country of the Eastern Hemisphere equal to 75 percent of the 1955–65 average of immigrant visas issued, less visas issued each year under the permanent provisions of the Immigration and Nationality Act, but not exceeding 7,500 visas per country per fiscal year; and (2) reduce the backlog in visa issuance in the fifth preference category—brothers and sisters of United States citizens.

GENERAL INFORMATION

The act of October 3, 1965 (Public Law 89–236) repealed the national origins quota concept as a system for selecting immigrants to the United States and substituted a ceiling on Eastern Hemisphere immigration on a first-come, first-served basis, within various preference categories.

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The original draft omnibus bill sent to the Congress by the late President John F. Kennedy on July 23, 1963, and a successor Executive Communication sent to the House by former President Lyndon B. Johnson on January 13, 1965, contained safeguard provisions to insure that the transition from the national origins system to the first-come, first-served system, would not disadvantage any particular country or area.

The bills introduced in accordance with these Messages provided for a five-year phaseout period with a 'pooling' of unused quota numbers to be reallocated to eliminate oversubscribed preferences and authorized the President to reserve up to 30 percent of the quota for "national security problems" and up to 10 percent for refugees. The 30 percent for national security was actually designed to insure that the new system would not impose undue hardship on any country that then enjoyed high quotas by suddenly curtailing their immigration. The President was authorized to restore cuts made by the new system, in the quotas established by the law then existing, until those countries could reasonably compete on an equal basis for immigrant visas with other countries of the Eastern Hemisphere.

A statement accompanying the Executive Commication emphasized:

> Exceptions to the principle of allocating visas on the basis of time of registration within the preference categories are provided to deal with such proposals. Since some countries' quotas are current, their nationals have no old registrations on file. To apply the principle rigidly would result, after four or five years, in curtailing immigration from these countries almost entirely. This would be undesirable, not only because it would frustrate the aim of the bill, that immigration from all countries should continue, but also because many of the countries that may be affected are our closest allies. Consequently, the bill provides that the President could res rve up to 30 percent of the quota reserve pool for allocation to qualified immigrants (1) who could obtain visas under the existing system but not under the new system; and (2) whose admission to the United States would further the national security interest by maintaining close ties with their countries. The number of quota visas so allocated may exceed the 10 percent limit on the number of immigrants from any country in the case of those countries which, under the existing system, regularly receive allocations in excess of that limit.

The primary objective of that legislation—the elimination of the national origins quota system—a system incompatible with the basic American tradition—was attained.

To replace the quota system, the legislation relied on a technique of preferential admissions based upon the advantage to our nation of the skills of the immigrant, and the existence of a close family relationship between the immigrant and persons who are already citizens or permanent residents of the United States, thus serving to promote the reuniting of families—long a priority goal of American immigration policy. However, the bill before enactment was amended in the following manner: (1) the five-year phaseout period was changed to a three-year phaseout period; (2) a labor certification procedure became applicable to other than relative preference categories; and (3) a very

different system of preferences was imposed. Furthermore, the proposed delegation of authority to the President to ameliorate cuts in visa quotas in high quota countries was not adopted.

As a consequence of the amendments, when the Act of October 3, 1965 became fully effective on July 1, 1968 after a three-year phase-out period of the old system, the backlogs in some oversubscribed preferences were not eliminated as intended by the proponents of the legislation and immigration from the former high quota countries was adversely affected.

In fact, immigration from Northern Europe, particularly Ireland, dissipated to a mere trickle and the backlog in the fifth preference, particularly with respect to Italy, was reduced by an insignificant amount.

This bill merely provides to those countries immigration benefits which were intended for them but which were denied to them due to the amended version of the bill which became the Act of October 3, 1965. The provisions of the Immigration and Nationality Act which are not applicable in this bill, were not applicable at the time the 1965 amendments were considered and it is the opinion of the Committee that they should not be applicable at this time.

The Committee has waited three years to determine whether the shortcomings of the 1965 amendments would correct themselves. It is obvious now that these shortcomings will only manifest themselves in greater hardship for many intending immigrants. The only corrective method is the enactment of remedial legislation. It is noted that historical precedent exists for the granting of nonquota status (under the former law) to quota aliens waiting for visas after the approval of a visa petition in their behalf. (See e.g., section 12, Act of September 11, 1957, 71 Stat. 642; section 2, Act of August 21, 1958, 72 Stat. 699; section 4, Act of September 22, 1959, 73 Stat. 644; section 25, Act of September 26, 1961, 75 Stat. 657; sections 1 and 2, Act of October 24, 1962, 76 Stat. 1247).

H.R. 9615 is designed to correct the inequities resulting from the Act of October 3, 1965. In fact, the dual thrust of the bill carries out the intent and purpose of the 1965 amendments to allow each country an opportunity to compete fairly and equitably for visas by creating a temporary floor on immigration based upon a 10-year average and by the partial, but reasonable, elimination of the backlog in the fifth preference for brothers and sisters. It was agreed in 1965 and, it is no less important today, that the inequities of, and the deficiencies in, our immigration law, must be eliminated before the United States can fully embark on a fair, reasonable, and equitable immigration policy. This bill does not in any way reinstate the national origins concept for selecting immigrants.

Sections 1, 2, and 3 of H.R. 9615, provide for the issuance of visas, in excess of the limitations specified in sections 201(a), 202(a), and 202(c) of the Immigration and Nationality Act,[1] to immigrants from certain countries. The intent of these sections is to facilitate the immigration of aliens chargeable to the beneficiary countries who

[1] Under section 201(a) of the Immigration and Nationality Act, 8 U.S.C. 1151(a), there is a limitation of 170,000 annually for the Eastern Hemisphere upon the number of aliens who may be issued immigrant visas or who may conditionally enter the United States. Section 202(a) of the Act, 8 U.S.C. 1152(a), provides that the total number of immigrant visas and the number of conditional entries made available to natives of any single foreign state in the Eastern Hemisphere shall not exceed 20,000 in any fiscal year. Section 202(c) of the act, 8 U.S.C. 1152(c), provides that no more than 200 immigrant visas are available in each fiscal year to immigrants born in a colony or dependent areas of a foreign state.

would not otherwise qualify for immigration or who would experience a delay in obtaining an immigrant visa because of the oversubscription of the Eastern Hemisphere preference classification to which they were entitled. These provisions would be applicable when the availability of immigrant visa numbers in the first to the sixth preference and the nonpreference categories [2] for immigrants from any particular foreign state or dependent area during a fiscal year, total less than 75 percent of the average annual number of visas issued to immigrants from such foreign state or dependent area during the 10-year fiscal period 1956–65. The number of extra visas to be made available would be equal to the difference between the number of visas issued during the preceding fiscal year and 75 percent of the 10-year average, but not exceeding 7,500. These provisions are temporary in nature and will automatically terminate after four fiscal years.

Section 212(a)(14) of the Immigration and Nationality Act requires a labor certification clearance by the Secretary of Labor in behalf of certain classes of immigrant aliens before a visa may be issued to them, including, specifically, preference immigrant aliens described in section 203(a) (3) and (6) of the act and nonpreference immigrant aliens described in section 203(a)(8). Some of the aliens who would be benefitted by this bill, and who would otherwise be subject to the labor clearance requirement of the basic law because they would be within the third or sixth preference or nonpreference categories, would be exempted from this requirement.

The potential number of visas which would be available for use under these sections is contingent upon the number of visas issued within the aforementioned preferences during the preceding fiscal year. According to figures submitted by the Department of State, 32,877 special visas maximum would be made available the first fiscal year

[2] Section 203 of the Immigration and Nationality Act, 8 U.S.C. 1153(a), is as follows:

"ALLOCATION OF IMMIGRANT VISAS

"SEC. 203. (a) Aliens who are subject to the numerical limitations specified in section 201(a) shall be allotted visas or their conditional entry authorized, as the case may be, as follows:

"(1) Visas shall be first made available, in a number not to exceed 20 per centum of the number specified in section 201(a)(ii), to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

"(2) Visas shall next be made available, in a number not to exceed 20 per centum of the number specified in section 201(a)(ii), plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are the spouses, unmarried sons or unmarried daughters of an alien lawfully admitted for permanent residence.

"(3) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 201(a)(ii), to qualified immigrants who are members of the professions, or who because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States.

"(4) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 201(a)(ii), plus any visas not required for the classes specified in paragraphs (1) through (3), to qualified immigrants who are the married sons or the married daughters of citizens of the United States.

"(5) Visas shall next be made available, in a number not to exceed 24 per centum of the number specified in section 201(a)(ii), plus any visas not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are the brothers or sisters of citizens of the United States.

"(6) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 201(a)(ii), to qualified immigrants who are capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States."

* * * * * * * *

"(8) Visas authorized in any fiscal year, less those required for issuance to the classes specified in paragraphs (1) through (6) and less the number of conditional entries and visas made available pursuant to pragraph (7), shall be made available to other qualified immigrants strictly in the chronological order in which they qualify. Waiting lists of applicants shall be maintained in accordance with regulations prescribed by the Secretary of State. No immigrant visa shall be issued to a nonpreference immigrant under this paragraph, or to an immigrant with a preference under paragraph (3) or (6) of this subsection, until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(14)."

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after enactment and would primarily benefit Germany, Great Britain, Ireland and Poland. The following chart illustrates the operation of these sections using 1971 as the base fiscal year.

CHART I

USAGE OF IMMIGRANT VISA NUMBERS UNDER SEC. 203(A) (1) THROUGH (6) AND (8) OF THE IMMIGRATION AND NATIONALITY ACT

	10-year average, fiscal year 1956–65	75 percent 10-year average	Fiscal year 1971	Special visas available in fiscal year 1972 under H.R. 9615
Europe:				
Albania	100	75	46	29
Austria	1,405	1,054	391	663
Belgium [1]	1,172	879	266	613
Bulgaria	100	75	88	----------
Czechoslovakia	2,522	1,892	875	1,017
Danzig	99	74	15	59
Denmark	1,175	881	304	577
Estonia	115	86	14	72
Finland	566	424	250	174
France [1]	3,049	2,287	1,455	832
Germany	25,340	19,005	2,639	[2] 7,500
Great Britain [1]	27,574	20,680	8,719	[2] 7,500
Greece	308	231	13,912	----------
Hungary	865	649	715	----------
Iceland	100	75	77	----------
Ireland	7,185	5,389	1,293	4,096
Italy	5,658	4,244	19,964	----------
Latvia	235	176	49	127
Liechtenstein	8	6	----------	6
Lithuania	384	288	49	239
Luxembourg	80	60	11	49
Malta	100	75	159	----------
Monaco	11	8	2	6
Netherlands	3,136	2,352	973	1,379
Norway	2,298	1,724	263	1,461
Poland	6,488	4,866	1,896	2,970
Portugal	438	328	11,157	----------
Rumania	289	217	833	----------
San Marino	100	75	24	51
Spain	250	188	2,212	----------
Sweden	2,141	1,606	374	1,232
Switzerland	1,698	1,274	641	633
U.S.S.R.	2,697	2,023	461	1,562
Yugoslavia	938	704	3,546	----------
Total	98,624	73,970	73,673	32,847
Asia:				
Afghanistan	36	27	60	----------
Burma	90	68	1,176	----------
Ceylon	64	48	164	----------
China [3]	205	154	14,825	----------
Cyprus	100	75	320	----------
India	100	75	14,746	----------
Indonesia	115	86	539	----------
Iran	100	75	1,880	----------
Iraq	100	75	1,079	----------
Israel	100	75	1,448	----------
Japan	185	139	1,718	----------
Jordan	100	75	2,121	----------
Korea	100	75	9,730	----------
Lebanon	100	75	1,305	----------
Malaysia	[4] 37	28	242	----------
Pakistan	100	75	2,206	----------
Philippines	100	75	19,987	----------
Singapore	[4] 49	37	106	----------
Southern Yemen	[5] 34	26	119	----------
Syria	[6] 81	61	744	----------
Thailand	78	58	1,039	----------
Turkey	225	169	1,305	----------
Vietnam	67	50	226	----------
Yemen	89	67	445	----------
Total	2,355	1,768	77,530	----------

See footnotes at end of table.

CHART I—Continued

USAGE OF IMMIGRANT VISA NUMBERS UNDER SEC. 203(A) (1) THROUGH (6) AND (8) OF THE IMMIGRATION AND NATIONALITY ACT—Continued

	10-year average, fiscal year 1956–65	75 percent 10-year average	Fiscal year 1971	Special visas available in fiscal year 1972 under H.R. 9615
Africa:				
Algeria	43	32	80	
Congo (Kinshasa)	23	17	27	
Ethiopia	67	50	51	
Ghana	50	38	151	
Kenya	33	25	297	
Liberia	46	34	72	
Libya	98	74	72	2
Mauritius	[5] 9	7	15	
Morocco	100	75	230	
Nigeria	64	48	354	
Sierra Leone	16	12	25	
South Africa	100	75	257	
Sudan	64	48	51	
Tanzania	[7] 19	14	198	
Tunisia	98	74	51	23
United Arab Republic	[6] 85	64	2,805	
Zambia	22	16	11	5
Total	937	703	4,747	30
Oceania:				
Australia	100	75	636	
New Zealand	100	75	264	
Pacific Islands	96	72	234	
Tonga	11	8	204	
Western Samoa	75	56	204	
Total	382	286	1,542	
Grand total	102,298	76,727	157,492	32,887

[1] Excludes dependencies which have become Eastern Hemisphere foreign states.
[2] Maximum authorized in any single year.
[3] Includes former quota for "Chinese persons."
[4] Numbers used by aliens attributable to Malaysia during period of federation with Singapore split 50–50 with Singapore.
[5] British subquota during this period.
[6] Numbers used by aliens attributable to U.A.R. during period of federation with Syria split 50–50 with Syria.
[7] Made up of Tanganyika and British subquota Zanzibar.

The second objective of the bill, sections 3, 4, 5, and 6, is directed at the backlog in the fifth preference. These sections provide that visas, in an amount equal to one-fourth of the total of fourth preference quota registrations (former preference for brothers and sisters of U.S. citizens) chargeable to any foreign state on July 1, 1964, be made available to aliens from that state who are the beneficiaries of fifth preference petitions filed prior to July 1, 1971. The visas are to be made available during a four-year fiscal period, 25 percent per year, with the added provision that visas not used by fifth preference beneficiaries will then be available during the same year to aliens chargeable to that foreign state who are beneficiaries of approved sixth preference petitions—workers in short supply in the United States—filed prior to July 1, 1971.

The Bureau of Security and Consular Affairs, Department of State, reported on September 28, 1964, in its bulletin, "Quota Registrations, Under Oversubscribed Quotas", that on July 1, 1964—the last date that a computation was made from the reports by consular offices worldwide—that there were 158,696 registrations under the then existing fourth preference. The largest oversubscription at that time was Italy, with 114,717, the next largest was Greece with 8,663, followed by Poland with 7,688 and Portugal with 7,591.

This iniquitous situation was a direct result of the discriminatory national origins system which provided disproportionate national quotas, to govern the admission of immigrants, without regard to the reunification of families. According to the latest report from the Bureau of Security and Consular Affairs, "Availability of Immigrant Visa Numbers for September 1971", the only countries with backlogs in the fifth preference category other than some subquota areas (dependencies of Great Britain, Netherlands and Portugal), are Italy and the Philippines. However, the oversubscription of the fifth preference for the Philippines is a peculiar situation which developed subsequent to the 1965 amendments to the Immigration and Nationality Act. The backlog in the Philippine fifth preference has been created because third preference applicants from that country—professionals and highly skilled persons—presently exhaust the 20,000 per country limitation. Consequently, Italy and the dependencies (subquota areas which are limited to 200 immigrants per annum—Antigua, British Honduras, British Virgin Islands, Grenada, Hong Kong, St. Christopher, St. Vincent, and the Portuguese dependent area Cape Verde) are the countries which are prejudiced by the 1965 amendments.

According to statistics submitted by the Department of State, 39,674 special visas would be made available during the four-year period under sections 3, 4, 5, and 6 of this bill. The primary beneficiaries would be Italy (28,680 special visas); Greece (2,166 special visas); Poland (1,922 special visas); and Portugal (1,405 special visas). The annual average of visas to be issued would be 9,918.

CHART II

4TH PREFERENCE REGISTRATIONS PENDING AS OF JULY 1, 1964 AND 25 PERCENT TOTAL REGISTRATIONS

Country	Pending, July 1, 1964	25 percent total	Country	Pending, July 1, 1964	25 percent total
Albania	44	11	Korea	217	54
Australia	279	70	Lebanon	232	58
Bulgaria	31	8	Libya	35	9
Burma	57	14	Malta	438	110
China	5,620	1,405	Morocco	245	61
Cyprus	350	88	New Zealand	8	2
Antigua	54	14	Pacific Islands	3	1
British Honduras	98	25	Pakistan	49	12
British Virgin Islands	193	48	Philippines	2,862	716
Grenada	94	24	Poland	7,688	1,922
St. Christopher	63	16	Portugal	7,591	1,998
St. Vincent	35	9	Romania	744	186
Greece	8,663	2,166	South Africa	38	10
Hungary	618	155	Spain	953	238
India	285	71	Syria	170	43
Indonesia	24	6	Tunisia	130	33
Iran	204	51	Turkey	660	165
Iraq	898	225	United Arab Republic	517	129
Israel	247	62	Yugoslavia	2,413	603
Italy	114,717	28,680			
Japan	448	112	Total	158,696	39,674
Jordan	681	170			

Precise estimates as to the number of aliens eligible for special visas under H.R. 9615, who will accept such visas and come to the United States, are difficult to provide. Similarly, the Department of State was unable to accurately predict the number of sixth preference applicants who would benefit by this legislaion.

Because of the difficulty in ascertaining the numerical impact of this legislation on the fifth and sixth preference categories, and

in order to insure the validity of statistics relating to backlog and demand, it is the conclusion of the Committee that the practice of the Department of State in allowing qualified aliens to remain on visa lists indefinitely should be revised.

It is urged that the Departmental regulations, which have been promulgated pursuant to section 203(e) of the Immigration and Nationality Act, be modified so as to require purging of visa lists regularly. Such regulations might provide that all aliens who fail to utilize visas within a reasonable period after notice of availability shall lose their eligibility. Such policy should of course, provide discretionary authority to the Secretary of State to make exceptions in individual cases where the failure to accept a visa within such period is due to illness, unusual circumstances, or inability to secure an exit visa.

Section-by-Section Analysis of H.R. 9615

Section 1: Provides additional immigrant visas to those foreign states from which the number of immigrants during the previous fiscal year totalled less than three-fourths of the average annual number of visas issued to immigrants from such foreign states during the ten-year period (1956–1965). The number of visas made available would equal the difference between the number of visas issued the previous fiscal year and 75 percent of the ten-year average, but not exceeding 7,500.

The following distribution would be made with these additional visas:

(1) 40% to applicants in the first through fifth preference classes, at a rate not exceeding 8% each;

(2) 30% plus fall down to sixth preference applicants; and

(3) 30% plus fall down to nonpreference applicants.

Labor certification procedures would not apply to visas issued under this Act.

Section 2: The provisions of section 1 of this Act shall terminate automatically after a 4-year period.

Section 3: Makes special immigrant visas available to any foreign state—equal to 25 percent of the fourth preference registration of such foreign state pending on July 1, 1964.

Section 4: Authorizes the Secretary of State to estimate the number of visas to be issued under section 3. Provides for the termination of the Secretary's authority to issue visas, under section 3, after a 4-year period and provides that not more than 25 percent of these visas shall be issued in any fiscal year.

Section 5: Provides that these special visas shall be made available to applicants (including their spouse and children) in the fifth preference class on whose behalf petitions have been filed prior to July 1, 1971. Requires the alien to retain his status and relationship with the petitioner.

Section 6: Provides for a falldown of visas unused by fifth preference applicants under section 5 to sixth preference applicants (including their spouse and children) on the basis of petitions filed prior to July 1, 1971.

Section 7: Provides that the definitions contained in the present immigration law shall apply in the administration of this Act. Provides that this Act shall not affect the authority of the Attorney General in immigration and naturalization matters.

Departmental Report

A report from the Assistant Secretary for Congressional Relations, Department of State, on this legislation reads as follows:

Department of State,
Washington, D.C.

Hon. Emanuel Celler,
Chairman, Committee on the Judiciary,
House of Representatives.

Dear Mr. Chairman: Secretary Rogers has asked me to reply to your letter of August 2, 1971, enclosing for the Department's study and report a copy of H.R. 9615, "A bill to make additional immigrant visas available for immigrants from certain foreign countries, and for other purposes."

Section 1 of this bill is substantially identical with H.R. 165, the subject of the Department's letter of April 20, 1971. If enacted, it would provide for the issuance of visas in excess of the limitations specified in sections 201(a), 202(a), and 202(c) of the Act to immigrants from certain countries. This provision would be applicable when the usage of immigrant visa numbers in the first through the sixth preference and the nonpreference classes by immigrants from any given foreign state or dependent area during a fiscal year totalled less than three-fourths of the average annual number of visas issued to such immigrants from that foreign state or dependent area during the ten-fiscal-year period 1956–1965. The number of extra visas to be made available would be equal to the difference between the number of such visas issued during the preceding fiscal year and 75% of the ten-year average, but not exceeding 7,500. The distribution of the additional visas to immigrants from such country would be—

(a) 40% to applicants in the first through fifth preference classes, at a rate not exceeding 8% each;

(b) 30% plus fall-down to sixth preference applicants; and

(c) 30% plus fall-down to nonpreference applicants, who shall be exempt from the provisions of section 212(a)(14) of the Act.

The Department is not yet in a position to provide statistical data on the amount of numbers which might be allotted for use under the provisions of this bill during fiscal year 1972 since the final country-by-country statistics for fiscal year 1971 will not become available for about two months following the end of the fiscal year. There is attached, however, as enclosure 1, a list of those countries from which numerically-limited immigration during fiscal year 1970 was less than three-fourths of the average numerically-limited immigration during the ten-fiscal-year period 1956–1965. The right-hand column of the enclosed table indicates the amount of immigrant visa numbers which would have been allocated under this bill to each such country during fiscal year 1971.

The Department assumes that the intent of section 1 is to facilitate the immigration of aliens chargeable to the beneficiary countries who would not otherwise qualify for immigration or who would experience a delay in obtaining an immigrant visa because of the oversubscription of the preference classification to which they were entitled. Nevertheless, the provisions of section 1 would, in our judgment, require that all intending immigrants chargeable to a beneficiary foreign state be

issued visas pursuant to its provisions, within the limits set forth therein, notwithstanding the immediate availability of a regular visa number. Thus, for example, an alien chargeable to the United Kingdom who was the beneficiary of an approved first preference petition would be issued a visa under the provisions of section 1 of this bill even though a first preference visa number would be immediately available for his use under the Eastern Hemisphere numerical limitation. As the Department interprets section 1, only when the full eight percent of the special numbers reserved for one of the first five preference categories for a beneficiary foreign state had been allocated would it be appropriate to consider issuance of a preference immigrant visa to an alien chargeable to that foreign state and entitled to that preference category.

For this reason and because of the exemption of aliens chargeable to beneficiary foreign states from the labor certification requirement of section 212(a)(14), the Department foresees that issuance of numerically limited immigrant visas to aliens from the beneficiary foreign states will decline annually until the demand for special visas exceeds the supply at which point those aliens who can qualify for immigrant status under the provisions of section 203(a) of the Act will do so in order to avoid the waiting period for special visas. This would then give rise to the "see-saw" effect described in the Department's letter of April 20, 1971, reporting on H.R. 165. On the other hand, should total annual demand for immigration from a beneficiary foreign state never exceed the maximum possible amount of special visas which could be authorized by section 1, then the issuance of preference and nonpreference immigrant visas to aliens chargeable that foreign state would decline to zero and would remain at that figure for the life of the bill.

On the other hand, it should be noted that there has recently been an increasing rate of "fall-out" among applicants from the beneficiary countries, as well as other countries, who are entitled to an immigrant status under present legislation. That is to say, many more aliens than normal are failing to respond to invitations to complete the processing of their immigrant visa applications. This phenomenon would tend to increase the portion of the special visas to be made available under this proposed legislation which could be used by aliens unable to establish entitlement to an immigrant status.

The Department continues to have the same substantive and technical objections to the provisions of section 1 as are enumerated in the report on H.R. 165, although the four-fiscal-year time limitation provided by section 2 of this bill is preferable to the unlimited duration proposed in H.R. 165.

Sections 3, 4 and 5 provide that visas in an amount equal to one-fourth of the total of fourth preference quota registrants chargeable to any foreign state as of July 1, 1964, be made available to aliens from that state who are the beneficiaries of fifth preference petitions filed prior to July 1, 1971, The visas are to be made available during a four-fiscal-year period, 25 per cent per year, but with no provision for carrying over any unused balance from year to year.

Section 6 provides that visas not used in any year by fifth preference petition beneficiaries from a given state be made available during that same year to aliens chargeable to that state who were the beneficiaries of approved sixth preference petitions filed prior to July 1, 1971.

There is attached as enclosure 2 a copy of Visa Office Bulletin No. 137 dated December 29, 1964, setting forth the reported totals of July 1, 1964 of registration on oversubscribed quota waiting lists, including registrations on oversubscribed fourth preference quota waiting lists. Enclosure 3 is a table in columnar form listing the foreign states or dependent areas which would benefit under sections 3 through 6 and the total of visas which would be made available to potential beneficiaries under these sections. Enclosure 4 is a table listing the approximate totals of potential beneficiaries on a country-by-country basis.

From a comparison of enclosure 1 and enclosure 3 it will be noted that there are four countries who are beneficiaries both under section 1 and sections 3, 4 and 5. It is assumed that an alien chargeable to one of these four countries who could benefit under either provision shall first be considered for the issuance of a visa under the former and would only be considered for the issuance of a visa under the latter section if the limitations on issuance in section 1 had been reached for the alien's preference classification and the foreign state to which he was chargeable.

The Department wishes also to point out that there are several situations in which it will not be possible to issue visas which theoretically should be made available under these provisions. In 1964 there existed an Asia-Pacific quota for aliens chargeable to the Asia-Pacific Triangle. Persons formerly chargeable to the Asia-Pacific quota have been, since 1965, chargeable to the country of their birth and there is no way at this time for the Department to identify prospective beneficiaries to whom the authorized visas should be made available. Thus some 615 visas theoretically available under this bill will not be susceptible of issuance. In addition, there are four foreign states—Barbados, Guyana, Jamaica and Trinidad—which were quota or subquota areas in 1964 and which are now chargeable to the Western Hemisphere limitation for immigration purposes. Since no preference structure exists under the Western Hemisphere numerical limitation, aliens who are natives of these four countries have not been entitled to a preference status since 1965 and there is no way to identify those natives of these four countries who were entitled to a fourth preference status under previous legislation and who might be deemed to be potential beneficiaries of these provisions. Thus, again, the visas to be theoretically made available to aliens from these four foreign states will not actually be available.

It is also worthy of note that the numerical limitations for one of the beneficiary foreign states and for several of the beneficiary dependent areas are so heavily oversubscribed that numbers are not available for fourth preference applicants chargeable to this foreign state or to those dependent areas. Therefore, this bill creates the anomalous situation of providing a special benefit for a number of fifth and sixth preference applicants chargeable to this state and these dependent areas while providing no benefit whatsoever to aliens from these areas entitled to a higher preference classification.

The Department also believes that the provisions of section 6 of the bill will be very difficult, if not impossible, to administer and that sixth preference aliens from the beneficiary foreign states will derive little or no benefit from this provision. Since the amount of visas which may be allocated under this bill for fifth preference applicants

is smaller in many cases than the number of potential beneficiaries, the Department believes that it might be impossible to determine whether any visas would be available for allocation to sixth preference beneficiaries until the end of the fiscal year when it would no longer be possible to make such visas available. At best, it might in some cases be possible to make a determination of this kind toward the end of a fiscal year and to allot some amount of visas for sixth preference applicants in the last month or two of the year. In other cases, it appears that the number of potential beneficiaries entitled to fifth preference status is so great that all available visas would be used for such aliens and that no visas at all would be available for allocation to sixth preference beneficiaries. With respect to Italy, for example, the amount of visas which would be made available to fifth preference beneficiaries is roughly equal to the number of beneficiaries of fifth preference petitions having priority dates between the current issuance cut-off date and July 1, 1971. In addition, there are also some 60,000 beneficiaries of fifth preference petitions having priority dates earlier than the current issuance cut-off date for Italian fifth preference. Although it is most difficult to predict the rate at which potential beneficiaries would come forward to take advantage of the provisions of this bill, it is reasonable to assume that out of the 88,000 total potential beneficiaries chargeable to Italy enough would come forward during the four-year period to entirely use the available visas. It is therefore very doubtful whether any of the visas available under this bill would become available for use by Italian sixth preference beneficiaries. There does exist a possibility that the availability of the special visas might sufficiently relieve the pressures on the 20,000 annual foreign state limitation for Italy to make preference visa numbers available to sixth preference applicants within the numerical limitations. Should this occur—and it is not certain that it will occur—it would most likely occur only during the third or fourth year of the life of this provision.

There are other factors which would further complicate the administration of this provision. There are nearly 40 foreign states and dependent areas to which visas would be made available in amounts ranging from nearly 29,000 in the case of Italy to 2 in the case of New Zealand. It would be necessary to establish a separate and parallel system of numerical controls and allocations to administer these provisions since the bill would make available for issuance a total of approximately 41,000 visas. While it is, of course, highly unlikely that all potential beneficiaries will come forward to take advantage of these provisions, it must be recognized that the potential demand for these visas exceeds the amount available. In addition, these provisions establish "national origins quotas" and it will be necessary to maintain a control system for the allocation of the visas within each "quota." Also, it may well be necessary to provide additional staff during the life of these provisions at certain consular offices abroad, especially in Italy, where the potential demand is the greatest, as well as in the Visa Office.

More significantly, the Department objects to these provisions because, as is the case with section 1 of this bill, these provisions represent a step backward toward a "national origins quota system," a system which the Department continues to oppose.

In view of the foregoing, the Department cannot recommend enactment of this proposed legislation.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely yours,

DAVID M. ABSHIRE,
Assistant Secretary for Congressional Relations.

After a careful study of this legislation, the Committee recommends that H.R. 9615 do pass.

CHANGES IN EXISTING LAW

The instant legislation does not provide for any change in existing law.

SEPARATE VIEWS

H.R. 9615 provides—during the four-year period of its life—for increased immigration into the United States.

Despite our established record as the melting-pot of the world—something which, on the whole, has served us well—such legislation, at a time of high unemployment, must inevitably raise questions.

The justification is, first, that the additional number of immigrants permitted is relatively modest; second, that, as already noted, the measure is only temporary in effect; and finally, and most importantly, that the bill serves to correct certain existing inequities in the immigration situation.

Essentially this bill seeks to do two things. *First*, it operates to permit additional immigrants, for and during a four-year period, from certain countries which were disadvantaged, immigration-wise, by the basic change in our immigration statutes which was adopted by Congress in 1965. It does this by providing that if, in any fiscal year after June 30, 1970, the total number of immigrants admitted from any foreign state was less than three-fourths of the average annual number admitted from such state during the ten-year fiscal period 1956–65, then there shall be made available to immigrants from such state an *additional number* of visas for the succeeding fiscal year equal to the *difference* between the number of visas made available to them in the preceding fiscal year and three-fourths of such average—but not to exceed 7,500 such additional visas in any one fiscal year.

For example, in the case of Great Britain, the 10-year average was 27,574, 75 percent of that figure is 20,680, while 8,719 were actually admitted in FY 1971. In FY 1972 Great Britain would thus be entitled to 7,500 additional visas (the maximum).

For Ireland the comparable figures are 7,185, 5,389, and 1,293, which would give Ireland 4,096 additional visas for FY 1972.

Among other countries which would obtain additional visas under this provision of the bill are Germany, Poland, the Scandinavian countries, the Netherlands, Czechoslovakia, and the U.S.S.R.

The *second* thing this bill does (Sec. 3 of the bill) is to provide that—over a four-year period—there shall be made available to qualified immigrants from any foreign state additional special visas equal to 25 percent of the Fourth Preference (now Fifth Preference) registration from such foreign state which was pending on July 1, 1964.

This is designed to clean up the so-called "backlog" existing in respect to potential immigrants from these countries who are qualified under the Fifth Preference (as brothers or sisters of United States citizens) but who have never been reached because over-all limitations or ceilings from these countries were exhausted before they were reached. A total of approximately 40,000 of these special visas would be made available for all countries.

Italians are the chief beneficiaries of this provision of the bill, and over a four-year period they would get over 28,000 of these 40,000 additional special visas.

These so-called "backlogs" have been, in the past, recurring, and the Department of State estimates that there are over 200,000 registrants at the present time who are "potential" beneficiaries of this provision of the bill.

It therefore seems fairly obvious that the issuance of 40,000 additional visas will not clear up this backlog and that further backlog-clearing legislation can be anticipated in the future, as has been the case in the past.

It is, consequently, our view that in order to justify this legislation at this current time of high unemployment some reasonable provisions should be included in the bill which would operate to curb or to prevent the recurrence of similar backlogs in the future.

One of the prime causes of this recurring Fifth Preference backlog is the liberal definition of the Fifth Preference in the present immigration statute, which includes in the Fifth Preference all brothers and sisters—married and unmarried—of citizens of the United States. This, in the case of large families, makes for a large Fifth Preference pool—many of the members of which are not, actually, members of the family unit of the United States citizen, but rather, in the case of married brothers and sisters, heads or members of new different, and distinct family units of their own.

Thus Mr. Charles Gordon, General Counsel of the Immigration and Naturalization Service, testified before the Immigration Subcommittee of the Committee on the Judiciary on August 6, 1970, as follows:

> Third, we support modification of the fifth preference to limit it to the unmarried brothers and sisters of a U.S. citizen, if the citizen is at least 21 years of age. The fifth preference is intended to promote family unity, and it seems correct to conclude that in granting a preference to married brothers and sisters, the present law is not actually unifying families, but in many cases is sanctioning the entry of new families.

In line with this thinking pending bills by the gentleman from New Jersey, Mr. Rodino (H.R. 1532), the gentleman from Ohio, Mr. McCulloch (H.R. 2328), and the distinguished gentleman from New York, Mr. Celler, Chairman of the Judiciary Committee (H.R. 7466), all contain provisions limiting the Fifth Preference to *unmarried* brothers and sisters of United States citizens.

Consequently when the pending bill was before the Committee on the Judiciary, in an effort to prevent these recurring backlogs and in order to be consistent with the intent and spirit of our immigration statute with respect to the preservation of the family unit, Mr. Dennis of Indiana offered an amendment to the present measure which limited the Fifth Preference category in the future to *unmarried* brothers and sisters of United States citizens.

The amendment in no way reduced the number of special visas made available to any country under Sec. 3 of this bill.

It in no way reduced the maximum number of regular visas available to any one country (20,000 per year) in the future.

A useful by-product of the amendment should be that, by limiting and reducing the number who can qualify under the Fifth Preference it should enable the entry of more Sixth preference Italians, such as tailors, seamstresses, stone-masons, and other skilled workers who are in short supply.

For all of these reasons Mr. Dennis' amendment was adopted, after debate, by vote of the full Committee on the Judiciary.

This action, however, was reversed, on reconsideration, at a later meeting of the Committee; an action which was taken at the urging of the gentleman from New Jersey, Mr. Rodino, Chairman of the Subcommittee on Immigration.

In our view the Dennis amendment, as originally adopted by the Committee on the Judiciary, is necessary in order to adequately and sufficiently justify the present bill. Without the amendment, we increase admissions and do nothing permanent about the backlog which has created the demand for this increase. With this amendment the bill can properly be regarded as appropriate remedial legislation designed to remedy existing inequities, to prevent their re-occurrence, and to bring our immigration into closer agreement with our demands and with the basic objectives of our immigration policy.

This amendment, or one essentially similar thereto, will be offered again when this bill is considered on the Floor, and we urge its favorable consideration upon our colleagues in the House of Representatives.

DAVID W. DENNIS.
EDWARD HUTCHINSON.
WILEY MAYNE.